IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

CRL.A.No. 654 of 1999(C)

AGAINST THE ORDER DT. 23.7.99 IN CC.37/1996 of JUDL.MAGISTRATE OF FIRST CLASS COURT-V, TRIVANDRUM.

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APPELLANT: COMPLAINANT

MADHUSOODHANAN NAIR,
PROPRIETOR, DEEPA MEDICALS,
WEST FORT, THIRUVANANTHAPURAM.

BY ADV. SRI.D.KISHORE

RESPONDENTS: ACCUSED & STATE

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1. **SIVAKUMAR,**
   CLERK, FINANCE DEPARTMENT, SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **STATE OF KERALA,**
   REP.BY ITS PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA.

BY ADV. SRI.M.SREEKUMAR
PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18 / 06 / 2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.A.NO.654 OF 1999

DATED THIS THE 18th June 2007

JUDGMENT

The appellant is the complainant in the private compliant filed alleging offences under sections 138 and 405 of the Negotiable Instruments Act. Cognizance was taken for the offence under Section 420 I.P.C. It is the case of the prosecution case that the accused borrowed a sum of Rs.10,000/- and entrusted a cheque for the same amount in the presence of one Chandra Babu of Deepa Medicals. On 19-1-1995 when the cheque was presented, the same was returned on the ground that as there was no money in he account showing the reason "properly not marked". (It has come up from the evidence of PW3 that the account stood in the name of the firm and in the seal of the firm was affixed in the cheque). The complainant issued lawyer notice for which he received a reply notice wherein false averments have been made and thereafter he has filed the complaint.

2. The evidence adduced in the matter consisted of the testimony of Pws.1 to 3 and Exts.P1 to P10. It is the case of Pw1, the complainant, that the accused borrowed the money and handed over

the cheque of the firm run by his younger brother and his wife misrepresenting that the cheque is with respect to the account holder. According to him, the amount was given and the cheque was received in the presence of PW3, another shop owner who allegedly introduced the accused to him. He has also stated that it was PW3 who put the date in the cheque at the time of the transaction. The accused after filling up the cheque handed over the same to PW3 and PW3 handed over the same to the complainant. The suggestion of the defence is that in fact the dealings was in between the complainant and Sreekumar, younger brother of the accused. PW2, the Bank Manager has testified with respect to the dishonour of the cheque for the reason mentioned that there was no sufficient balance in the account as well. The trial court has noted the evidence of Pw3 indicated that he is not in fact a witness to the transaction and that the version that it was he who introduced the accused to the complainant etc. cannot be believed in view of the discrepancies in his version. He has mentioned the name of the accused differently twice. He has stated the name of the brother of the accused and the accused differently. The name of the brother of the accused is mentioned as Suresh whereas the correct name is Sreekumar and the name of the accused

Subhakumar and proper name is Sivakumar. The court has rightly held that PW3 is a tutored witness. In the circumstances, I find that it cannot be held that the prosecution has proved the case beyond reasonable doubt. I find no reason to interfere in the findings of the court below.

The Crl.appeal is dismissed.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.R.P.NO.654 OF 1999

ORDER

18-6--2007